

## **NOTICE OF PROPOSED REGULATIONS**

### **California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3040.1, 3341.5, 3375, 3375.3, and 3378 in the California Code of Regulations (CCR), Title 15 concerning gang management validation.

#### **PUBLIC HEARING:**

Date and Time: November 30, 2005, 9:00am to 11:00am  
Place: Water Resources Auditorium  
1416 Ninth Street  
Sacramento, CA 95814  
Purpose: To receive comments about this action.

#### **PUBLIC COMMENT PERIOD:**

The public comment period will close November 30, 2005 at 5:00 pm. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)358-2636; or by e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

#### **CONTACT PERSON:**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 358-1655**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Ann Cunningham  
Regulation and Policy Management Branch  
Telephone (916) 358-1655**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Everett Fischer  
Law Enforcement and Investigations Unit  
Telephone (916) 327-3268**

#### **LOCAL MANDATES:**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT:**

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS:**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES:**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:**

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:**

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

On May 10, 2005, Legislation (Senate Bill 737) was signed into law and effective on July 1, 2005, the Youth and Adult Correctional Agency, which consisted of the California Department of Corrections (CDC), the California Youth Authority (CYA), the Board of Prison Terms, the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority was abolished, and reorganized into the Department of Corrections and Rehabilitation.

Government Code (GC) Section 12838(a) creates the Department of Corrections and Rehabilitation (CDCR), headed by a secretary.

GC Section 12838.5 vests to the CDCR, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished entities: CYA, CDC, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and State Commission on Juvenile Justice, Crime and Delinquency Prevention. The abolished entities are known as “predecessor entities.”

GC Section 12838.8 authorizes that all regulations adopted by the predecessor entities, continuing entities, and any of their predecessors are expressly continued in force, and any statute, law, rule, or regulation now in force or that may hereafter be enacted or adopted with reference to the predecessor entities and any of their predecessors shall mean the CDCR.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code refers to the CDCR, Division of Adult Operations.

Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that the supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5055 provides that all powers and duties granted to and imposed upon the Department of Corrections shall be exercised by the Director of Corrections, except where such powers and duties are expressly vested by law in the Board of Prison Terms. Commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR, except where those powers and duties are expressly vested by law in the Board of Parole Hearings.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- The Department certifies that gang activity undermines the safety and security of the institution. The gang validation and debriefing process is necessary in order to decrease the risk that prison gangs pose to the safety and security of the institutions.
- This language provides the inmate and staff with clear and concise language regarding prison gang validation. This action includes language that states that a gang member or associate who is validated as a dropout of a prison gang may be removed from the general population or any other placement based upon a reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated.
- The verification methods now requires staff to articulate the basis for determining the content of visual or audible observations or conduct at issue which indicate gang activity; to articulate why, based on either the explicit or coded content of any material or documents, including addresses, and names, evidencing gang activity that the written material is reliable evidence of association or membership with the gang; and to document information gathered in a written form.
- Changes for enhanced clarity, including reference, grammatical corrections, and changes in punctuation are also made to meet departmental standards.